STATE OF MICHIGAN

COURT OF APPEALS

VETERANS OF FOREIGN WARS, Plaintiff-Appellant,	UNPUBLISHED May 25, 1999
v	No. 202664 Ingham Circuit Court
AUTO-OWNERS INSURANCE COMPANY, Defendant-Appellee.	LC No. 96-083881 CK

Before: Gage, P.J., and MacKenzie and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition to defendant pursuant to MCR 2.116(C)(10). We affirm.

The parties do not dispute the facts underlying the instant action. Plaintiff is one of several defendants in two separate lawsuits filed by Veteran's Services, Inc. (VSI), a fundraising service provider. VSI's first (amended) complaint also named as defendants three of its former employees, a competing fund solicitation business called Veterans Corporation of America (VCA) that was incorporated by the former employees, and plaintiff's state commander in his individual capacity. The first complaint generally alleged that the former employees improperly absconded with confidential documents and information of VSI and utilized this information to benefit VCA in its competition with VSI. According to the first complaint, plaintiff failed to renew its solicitation agreement with VSI, instead entering a similar agreement with VCA. The only count in VSI's first complaint naming plaintiff alleged that plaintiff had tortiously interfered with the employment relationship between VSI and the former employees. The second complaint filed by VSI named as defendants plaintiff, plaintiff's commander individually, two of the same former employees that were named in the first complaint, and Veterans Benefits, Inc. (VBI), a second fund solicitation company incorporated by the former employees and with which plaintiff had entered a solicitation agreement. The second complaint claimed generally that VBI had been formed in an effort "to avoid [defendants'] liability and to defraud their potential creditors namely [VSI]."

Plaintiff notified defendant insurer of VSI's complaints and requested that defendant undertake defense of the lawsuits pursuant to the terms of the parties' commercial general liability policy.

Defendant refused, claiming that the allegations of VSI's lawsuits did not fall within policy coverage. After plaintiff instituted this declaratory judgment action, both parties moved for summary disposition under MCR 2.116(C)(10).

Plaintiff contends that the trial court erred in granting defendant summary disposition because the allegations in each of VSI's complaints came within the policy's definitions of "personal injury" and "advertising injury." We review de novo the trial court's grant of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Plaintiff's argument requires us to interpret the insurance contract language. To determine whether an insurer has a duty to defend its insured, we look to the language of the insurance policy and construe its terms to find the scope of the coverage of the policy. *GAF Sales & Service, Inc v Hastings Mutual Ins Co*, 224 Mich App 259, 261; 568 NW2d 165 (1997). An insurer has a duty to defend if the allegations of the underlying suit arguably fall within the coverage of the policy. *Id*. In construing the policy language, we must give the policy language its plain meaning, apply the definitions of terms as set forth in the contract, and when the terms are not defined in the contract give them definitions that are in accord with their common usage. *Henderson v State Farm Fire & Casualty Co*, 225 Mich App 703, 709; 572 NW2d 216 (1997), lv gtd 459 Mich 878 (1998). Technical or strained construction of terms should be avoided. *Id*. When the contract's terms fairly admit of but one interpretation, its meaning is clear. *Farm Bureau Mutual Ins Co of Michigan v Stark*, 437 Mich 175, 182; 468 NW2d 498 (1991). Insurance contract interpretation is a question of law that we review de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

The portions of the parties' insurance policy relevant to the instant dispute include the following:

SECTION I—COVERAGES

* * *

COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement.

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any "suit" seeking those damages.

* * *

b. This insurance applies to:

(1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;

(2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

* * *

SECTION V—DEFINITIONS

1. "Advertising injury" means injury arising out of one or more of the following offenses:

a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

* * *

c. Misappropriation of advertising ideas or style of doing business;

* * *

10. "Personal injury" means, other than "bodily injury", arising out of one or more of the following offenses:

* * *

d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services . . . .

Plaintiff first claims that VSI's tortious interference count against plaintiff potentially involves a personal or advertising injury as defined in the policy because to intentionally induce VSI employees to breach their employment contracts, plaintiff may possibly have disparaged VSI's goods, products or services.[1] The instant policy's coverage for an advertising injury or a personal injury requires the following three elements: (1) an advertising injury or a personal injury as defined in the policy; (2)(a) assuming an advertising injury, a course of advertising; or (2)(b) in the case of a personal injury, the conduct of plaintiff's business, "excluding advertising, publishing, broadcasting or telecasting;" and (3) proof of a causal relationship between the first two elements. See *GAF Sales & Service*, *supra* at 262.[2]

VSI's tortious interference claim against plaintiff does not even arguably involve a personal or advertising injury as defined in the parties' insurance policy. The entirety of VSI's allegations of conduct by plaintiff related to tortious interference consists of the following statement: "That defendant[], . . . [plaintiff], intentionally induced defendants [former employees] to breach their contract with [VSI]." This allegation neither explicitly alleges nor fairly implies that plaintiff disparaged VSI's goods, products, or services. Furthermore, absolutely no indication or implication exists elsewhere within the instant record that plaintiff disparaged VSI's goods, products or services. The trial court correctly observed

that plaintiff provided it with no evidence that "would require an inference of disparagement on the part of" plaintiff. In its argument that coverage applies, plaintiff relies strongly on the principle that the duty of an insurance company to provide a defense in an underlying tort action depends on the allegations in the complaint and extends to allegations that even arguably come within the policy coverage.[3] While we agree with this principle, we do not find it applicable to the instant case given the total lack of a basis from which to even argue that VSI's tortious interference allegations contemplate plaintiff's disparagement of its goods, products or services.[4] Therefore, we conclude that because no personal or advertising injury even arguably existed, defendant owed plaintiff no duty to defend against VSI's allegations.[5]

Furthermore, even assuming arguendo that VSI's allegations sufficiently established a personal or advertising injury, plaintiff has still failed to satisfy the second and third required coverage elements. The tortious interference claim was alleged to have arisen out of efforts to renegotiate a solicitation contract while the fraudulent conveyance and conspiracy claims were alleged to have resulted from efforts to avoid liability stemming from the first lawsuit. No indication exists within VSI's tortious interference, fraudulent transfer, or conspiracy allegations, or otherwise within the record that these injuries were causally linked to either (1) in the case of an assumed advertising injury, a course of advertising conducted by plaintiff, or, (2) assuming a personal injury, plaintiff's conduct of its business operations other than advertising. Thus, even assuming injuries contemplated within the parties' policy, the absence of the required causation element would also relieve defendant from any duty to defend.

Finally, plaintiff argues that the allegations in VSI's complaints support a finding of an advertising injury because "the entire basis of the underlying complaints . . . was a misappropriation of [advertising] ideas or style of doing business," and that under the policy defendant thus owed a duty to defend. As discussed above, to support a finding that defendant owed a duty to defend, plaintiff must show that there was an advertising injury that occurred in the context of plaintiff's course of advertising. *GAF Sales & Service*, *supra*.

The first complaint charging plaintiff with tortious interference did not present any allegation that suggested that *plaintiff* had misappropriated VSI's advertising ideas or style of doing business or that plaintiff had somehow aided or inspired the former employees' alleged misappropriation. While we agree with the dissent that VSI's complaints can fairly be read to allege a misappropriation of VSI's advertising ideas, these allegations were directed at VSI's former employees. There is no reason to impute this apparently independent misappropriation against plaintiff when VSI did not allege that plaintiff played any part in the misappropriation. The second complaint alleged that plaintiff fraudulently conveyed its solicitation contract from VCA to VBI and conspired with the two former VSI employees to commit that fraudulent conveyance in order to defraud VSI and avoid liability arising from the first lawsuit. These allegations simply do not involve any claim of plaintiff's misappropriation of VSI's advertising ideas or style of doing business. We therefore conclude that plaintiff failed to demonstrate that the allegations in either of VSI's underlying complaints stated an advertising injury in the form of misappropriation within the terms of the liability policy.

Because plaintiff failed to show that VSI alleged any advertising or personal injury as defined in the parties' policy, defendant owed plaintiff no duty to defend against VSI's underlying complaints, and the trial court properly granted defendant summary disposition.

Affirmed.

/s/ Hilda R. Gage
/s/ Barbara B. MacKenzie

[1] In plaintiff's brief on appeal, the statement of his first question presented also mentions the fraudulent transfer of property and conspiracy to commit fraud counts of VSI's second complaint as potentially involving plaintiff's disparagement of VSI's goods or services. However, the subsequent discussion regarding the first question presented fails to develop this argument or cite to any authority supporting this argument. Therefore, plaintiff has abandoned this issue on appeal. *Winiemko v Valenti*, 203 Mich App 411, 415; 513 NW2d 181 (1994). Furthermore, we note that VSI's allegations supporting the fraudulent transfer and conspiracy counts do not state or raise any inference that plaintiff engaged in any disparagement on which VSI would rely in attempting to establish fraudulent transfer and conspiracy. The second complaint's allegations relate solely to VSI's claim that the former employees created VBI in an effort to avoid the liability potentially arising from VSI's claims in its first complaint against VCA, and that plaintiff was a party to this fraud because it canceled its contract with VCA and subsequently entered a new solicitation contract with VBI.

[2] In *GAF Sales & Service, supra*, this Court addressed an insurer's duty to defend under a commercial general liability policy containing at least some coverage language identical to that of the instant policy. *Id*. at 261-262. The Court did not address an allegation by the plaintiff that the defendant owed it a duty to defend against a personal injury that it had inflicted, but only addressed the policy's language concerning an advertising injury. Therefore, the Court determined that the above-listed elements were required in addressing "policy coverage for '*advertising* injury.'" *Id*. at 262 (emphasis added). The Court cited the majority rule that the advertising injury must have a causal connection with the advertising activity, *id*. at 262 n 2, but did not discuss causation regarding a personal injury. However, given the instant policy's provision for coverage of personal injuries "arising out of [plaintiff's] business," we find that the policy clearly contemplates a causal connection between the personal injury and plaintiff's conduct of its business. For authorities holding that the phrase "arising out of" expresses a requirement that a causal connection exist between an injury and the insured's business, see *American Guarantee & Liability Ins Co v 1906 Co*, 129 F3d 802, 807 (CA 5, 1997); *HS Services, Inc v Nationwide Mutual Ins Co*, 109 F3d 642, 647 (CA 9, 1997); 7 Couch, Insurance, 3d, § 101:54.

[3] For this proposition, plaintiff cites *Allstate Ins Co v Freeman*, 432 Mich 656, 662; 443 NW2d 734 (1989), and *Detroit Edison Co v Michigan Mutual Ins Co*, 102 Mich App 136, 141-142; 301 NW2d 832 (1980) (finding a duty to defend where it could be *reasonably* inferred from statements in underlying complaint, including that the insured failed to maintain and control certain equipment, that complainant alleged negligent supervision, as covered by policy).

[4] We briefly note that the federal case law relied on by plaintiff is distinguishable from the instant case because each of the federal cases cited by plaintiff involved some explicit factual allegations that brought the underlying complaints within the language of the policy coverage. In the instant case, no explicit allegations exist.

[5] Plaintiff has raised the unsupported contention that the tortious interference alleged by VSI could have conceivably involved disparagement. We note that for courts generally to order coverage by an insurer merely because a conceptual possibility exists that the insured's actions could fall within the scope of the applicable liability policy would undermine the well-settled proposition that an insurer will not be held responsible for a risk that it did not assume. See *Allstate Ins Co v Fick*, 226 Mich App 197, 201; 572 NW2d 265 (1997).